



**House
Legislative
Analysis
Section**

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MOBILE HOME PARK TENANTS

House Bill 5603 as enrolled
Sponsor: Rep. Nelson Saunders

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Senate Bill 912 as enrolled
Sponsor: Sen. Harmon Cropsey

NOV 10 1988

Mich. State Law Library

Second Analysis (10-11-88)
House Committee: Urban Affairs
Senate Committee: Local Government and Veterans

THE APPARENT PROBLEM:

Mobile home park tenants have long complained that Michigan law treats those who own their mobile home, but rent space in a park, in the same way it treats other tenants, when, in fact, mobile home tenancy is considerably different. Tenants in an apartment building, for example, who receive a 30-day eviction notice, have 30 days to pack their belongings, find another apartment, and relocate. Mobile home owners, on the other hand, must either move their mobile home to another park, or attempt to sell the home in the park they are being evicted from. Although administrative rules governing mobile home parks require that tenants be offered a minimum one-year lease, the rules do not require leases to be renewed. Also, many tenants apparently do not exercise their right to a year's lease. As a result, whether a lease is not renewed or not accepted, the park owner can give a 30-day notice to quit without cause.

Problems also have been identified concerning the ability of mobile home park residents to sell their home on-site. According to the Mobile Home Commission, in response to the law's prohibition against parks' charging an exit fee, the park industry began to deny tenants the right to sell their home on-site. Although the commission promulgated a rule in the late 1970s to protect that right, the rule was overturned by the Michigan Court of Appeals as being beyond the commission's authority. It is reported that tenants are still being denied in-park sales and, in some cases, park owners will allow a home to be sold only to them, if it is sold at all, at a fraction of its worth.

Finally, mobile home park tenants also complain about uneven enforcement of park rules and about park owners and operators who use rule enforcement and the threat of eviction to intimidate residents, possibly to induce tenants to move an older home that may be unattractive or not large enough for the site to generate sufficient rental income.

THE CONTENT OF THE BILLS:

House Bill 5603 would amend the Revised Judicature Act and Senate Bill 912 would amend the Mobile Home Commission Act to address the rights of tenants and owners of mobile home parks. The provisions of the bills would not apply to seasonal mobile home parks, as defined in the Mobile Home Commission Act. The bills are tie-barred to each other, and would take effect May 1, 1989.

The Revised Judicature Act provides that a property owner may recover possession of his or her property by summary proceedings when a tenant remains on the property illegally. House Bill 5603 would amend the act to specify that this provision would not apply to a tenant of a mobile

home park unless the tenancy or lease was terminated for just cause. Under the bill, "just cause" would mean one or more of the following:

- Use of the mobile home site by a tenant for an unlawful purpose;
- Failure by a tenant to comply with a lease or agreement by which the tenant holds the premises, or with a rule or regulation of the park which was reasonably related to either the health, safety or welfare of the park, its employees, or its tenants; to the quiet enjoyment of the other park tenants; or to maintaining the physical condition or appearance of the park or mobile homes to protect the park's value or to maintain its aesthetic quality or appearance;
- A violation by the tenant of rules promulgated by the Department of Public Health regarding water supply, sewage, garbage disposal and so forth;
- Intentional physical injury by the tenant to other tenants or to mobile home park personnel, or intentional physical damage to the property of the mobile home park or other tenants' property;
- Failure of the tenant to comply with a local ordinance, state law, or governmental rule or regulation relating to mobile homes;
- Failure of the tenant to make timely payment of rent or other lease or rental agreement charges on three or more occasions during a 12-month period. This provision would apply if the park owner or operator had served a written demand for possession for nonpayment, and the tenant had failed or refused to pay the rent or other charges within the time period stated in the written demand. This provision, however, would not affect the tenant's right to defend the late payment in court. The bill would require that the written demand provide a notice to the tenant in substantially the following form:

"Notice: Three or more late payments of rent during any 12-month period is just cause to evict you."
- Conduct by the tenant upon mobile home park premises which constitutes a substantial annoyance to other tenants or to the park, after notice and an opportunity to make amends;
- Failure of the tenant to maintain his or her mobile home or site in a reasonable condition, consistent with aesthetics appropriate to the park;
- Condemnation of the mobile home park;
- Changes in the use or nature of the park; and
- Public health and safety violations by the tenant.

Changes in rental payments or the terms or conditions of tenancy in a mobile home park, following the termination or expiration of a written lease agreement for the mobile

H.B. 5603 & S.B. 912 (10-11-88)

home site, would not be affected by the above provisions. The district court would maintain jurisdiction over the termination proceedings, and the present provisions of the act governing venue would apply.

Under the bill, a mobile home park tenant would have the right to request, within ten days of receiving an eviction notice, an in-person conference with the park owner or operator or with the owner or operator's representative. The conference would be held at the mobile home park within 20 days, at a time and date established by the landlord, and the tenant could be accompanied by counsel. These provisions would not affect a landlord's right to commence summary proceedings pursuant to the demand for possession. In every action, the tenant would be required to pay all rent when due while the action was pending, and the landlord could accept such payment without prejudice to the action.

The bill would require a judgment for possession resulting from an action to terminate a mobile home tenancy for just cause to include an explanation of the tenant's right to sell the mobile home on-site, as provided in Senate Bill 912. If a tenancy in a park were terminated for just cause, the tenant could sell his or her mobile home on-site, as provided in the Mobile Home Commission Act, subject to the following conditions:

a) The tenant would have to sell or move the mobile home within 90 days after the date of the judgment of possession, except that, if the mobile home park owner or operator denied tenancy to a person making a bona fide offer to purchase the mobile home within the 90 day period, or any proper extension of the time period, then the time period would be extended another 90 days;

b) The tenant would be required to pay all rent and other charges for the site on time during the 90-day period, or any proper extension of the above time period. If the tenant failed to do so the landlord would be entitled to seek an immediate writ of restitution for possession of the mobile home site, as provided by the act;

c) Ten days after the date of the judgment of possession, the landlord could disconnect all mobile home park-supplied utility services;

d) Within ten days after the date of the judgment of possession, the tenant would be required to provide the landlord with proof that the mobile home had been properly winterized by a licensed mobile home installer and repairer. Failure to provide the proof of winterization in time would entitle the landlord to seek an immediate writ of restitution for possession of the mobile home site, as provided by the act;

e) The tenant would be required to continue to maintain the mobile home and mobile home site in accordance with the rules the regulations of the park; and,

f) The mobile home park would be required to provide the tenant with reasonable access to the mobile home and the mobile home site for the purpose of maintaining the home and site and selling the home.

Under the bill, in every action to terminate a tenancy for just cause the court would be required to award liquidated damages to the prevailing party, as established in the tenant's lease or agreement or in the park rules or regulations. The liquidated damages would not be construed as a penalty. (Under Senate Bill 912, the lease, agreement, or rules or regulations could provide for liquidated damages in an amount not to exceed \$500 in the district court, and \$300 for each appellate level).

MCL 600.5714 et al.

Senate Bill 912 would prohibit mobile home park owners or operators from denying a tenant the right to sell his or her mobile home, on-site, at a price determined by the tenant, if the purchaser qualified for tenancy and the mobile home met the conditions of written park rules or regulations. Under the bill, mobile home park rules or regulations could include provisions governing the physical condition of mobile homes and the aesthetic characteristics of mobile homes in relation to the park, subject to the following:

- The age or size of a mobile home could not be used as the sole basis for refusing to allow an on-site, in-park sale or for refusing to allow the mobile home to remain. The burden of initiating suit against the mobile home park owner for violation of this provision would be on the tenant; in all other cases specified below the mobile home park owner or operator, or both, would have the burden of initiating suit.
- The standards incorporated in the written park rules or regulations governing the physical condition and aesthetic characteristics of mobile homes in the park would apply equally to all tenants.
- A mobile home sold on-site would be required to conform with the Fire Protection in Mobile Homes Act.
- Any charge connected to the on-site sale of a mobile home other than for inspection by the park owner or operator prior to the sale, or the sales commission charged by a mobile home dealer, would be considered an entrance or exit fee, in violation of the act.
- A park owner or operator could charge a reasonable fee to inspect the mobile home before sale. The fee could not exceed \$30, or the amount charged for building permit inspections by the municipality, whichever was higher.
- Standards governing the physical condition of mobile homes and the aesthetic characteristics of mobile homes in the park, as incorporated in written park rules, could not be designed to defeat the intent of the bill. This provision would not apply if the mobile home park were changing its method of doing business and provided not less than one year's notice, unless a different notice period of the proposed change was otherwise provided by law to all affected mobile home park residents. A change in a mobile home park's method of doing business would include conversion to a mobile home park condominium, conversion to total rental of both mobile home sites and park-owned mobile homes, or changes in the use of the land on which the mobile home park was located. Notwithstanding these provisions, a mobile home park could require that a mobile home be moved to a comparable site within the park, at the expense of the park.

Should a mobile home park resident sell his or her mobile home to the owner or operator of a park, after termination of the resident's tenancy for "just cause," as provided in House Bill 5603, the resident would have the right to have the mobile home appraised. The sale price of the mobile home could not then be less than the appraised value. The bill would allow a lease or rental agreement, or rules adopted under such an agreement, to include a provision requiring liquidated damages of up to \$500 for an action in district court and up to \$300 for each appellate level to be awarded to the prevailing party in a contested action to terminate a mobile home park tenancy for "just cause."

A mobile home park rule that did either of the following could not be enforced against a resident, unless the rule was proposed and in force before the resident was approved for tenancy in the park:

a) Prohibited those children who were previously approved under prior park rules from residing in the park. A rule

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prohibiting children, or additional children, could not be enforced against persons who were resident at the time the rule was adopted until after one year's notice to those persons;

b) Prohibited a resident from keeping those pets which were previously approved under prior park rules, except for dangerous animals.

Under the bill, the Mobile Home Commission could impose one or more of the following penalties if, after a notice and a hearing, a person were determined to have violated the act: censure; probation; placement of a limitation on a license; suspension or revocation of a license, in which case the commission could request the appointment of a receiver; denial of a license; a civil fine not to exceed \$10,000; or a requirement that restitution be made. A fine collected would be deposited with the state treasurer and credited to the Mobile Home Commission Fund. These penalties would not prohibit actions being taken under other sections of the act. Should the Department of Commerce find that the public health, safety, or welfare required emergency action, and incorporated that finding in its order, summary suspension of a license could be ordered, effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever was later, and effective during the proceedings. The bill would require that the proceedings be promptly commenced and determined.

The bill would repeal a November 1, 1988 expiration date for the act.

MCL 125.2328 et al.

FISCAL IMPLICATIONS:

According to the Mobile Home Commission, the bills have no fiscal implications for the state. (9-20-88)

ARGUMENTS:

For:

The bills would recognize the unique relationship that exists between mobile home park tenants and park owners. Unlike tenants living in apartments or homes, mobile home park residents incur significant additional expenses when evicted. A mobile home owner may have to pay thousands of dollars to move the home, on top of having to find a suitable park to move it to, or try to sell the home. Mobile home park tenants who are poor, or who are elderly and on a fixed income, are perhaps the most victimized, since they frequently cannot pay the high moving expenses and must abandon their home at the site. It is even alleged that some unscrupulous parks will evict tenants in order to buy their home at a bargain-basement price. In other situations, a park may simply want to upgrade its image and rid itself of older, unattractive homes. Or, because some older homes are relatively small, a park might want to rent sites for newer, larger models that will generate more rental income.

The bills would safeguard the right of a mobile home owner to sell his or her home on-site. By assuring tenants the right to on-site sales, the bill would benefit both tenants and the mobile home industry, since homes sold on-site appreciate in value. Further, in order to prevent park owners from taking advantage of a resident's termination to buy the home at a cut-rate price, the tenant would have the right to have the home appraised, and the price could not be less than the appraised value, if the home were being sold to the park owner or operator.

Against:

The liquidated damages provisions in the bills are inequitable, inappropriate, and unnecessary. Considering the comparative wealth of mobile home park tenants and park owners, as well as their relative bargaining positions, liquidated damages would clearly impose a much greater burden on the tenants, would amount to a penalty on tenants for defending an eviction action and could discourage tenants from asserting legitimate claims. In addition, in most eviction proceedings, there are no clear winners or losers: while the judge may award the landlord possession of the premises, the judge also may find that some of the tenants' claims are legitimate as well. At the very least, the bills should allow liquidated damages to be awarded at the judge's discretion, rather than mandating that they be awarded if a lease contained a liquidated damages provision.

Furthermore, liquidated damages are typically used when the parties entering into a contract anticipate that the amount of actual damages, upon a breach of the contract, will not be ascertainable. Under the bills, however, it appears that the liquidated damages would be for the purpose of paying the prevailing party's attorney fees (as the provision was originally drafted under a parallel bill, House Bill 5602). In this country, awarding attorney fees is the exception, rather than the rule, and is usually provided for statutorily—such as in Michigan's Elliott-Larsen Civil Rights Act and the Consumer Protection Act—in order to encourage persons who have been discriminated against to sue defendants who violate their rights. Attorney fees also might be awarded if a losing party's action or defense was frivolous, and awarding costs already is adequately provided for both in the Michigan Court Rules (MCR 2.265) and in the Revised Judicature Act (MCL 600.2591).

Against:

In return for granting mobile home park tenants the "right" to sell their homes on-site, House Bill 5603 would impair the existing rights of mobile home tenants, as compared to other tenants. Under current law it is illegal to evict a tenant for withholding rent pending the resolution of the eviction case in court. Although a court may order a tenant to pay current rent to the court pending a resolution of the case, the court cannot require tenants to pay rental arrearages. If a court cannot order tenants to pay this rent into the court, then mobile home park tenants should not be required to pay it to landlords, as the bill would require. The provision in the bill that allows landlords to obtain eviction orders without presenting a case in court is also directly contrary to current court rules governing eviction procedures adopted by the Michigan Supreme Court, which prohibit the execution of a writ of restitution (the actual eviction of a tenant by a court-bailiff) prior to judgment. This provision removes a tenant's basic fundamental right to trial and to a court hearing.